



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Adelaide Blomfield Management Company

File: B-253128.2

Date: September 27, 1993

Timothy H. Power, Esq., for the protester,
Robert J. Dickson, Esq., Atkinson, Conway & Gagnon, for
Calais Properties, Ltd., an interested party.
Richard J. Moen, Esq., General Services Administration, for
the agency.
Andrew T. Pogany, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Although the evaluation of proposals is primarily within the discretion of the contracting agency, the General Accounting Office will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation factors and will sustain the protest where the record shows that the evaluation was unreasonable.

DECISION

Adelaide Blomfield Management Company protests the award of a lease to Calais Properties, Ltd. under solicitation for offers (SFO) No. MAK91191, issued by the General Services Administration (GSA) for office space for the Forest Service in Anchorage, Alaska. Adelaide principally contends that GSA misevaluated proposals; that GSA improperly awarded the lease to Calais whose best and final offer (BAFO) was late and did not conform to the requirements of the SFO; and that GSA ignored the requirements of Executive Order 12072, 43 Fed. Reg. 36,869 (1978), by awarding the lease to Calais whose property was located outside the central business area of Anchorage.¹

¹While this protest was pending, Adelaide filed suit in the United States District Court for the District of Alaska, raising the same issues which are present in the protest. Adelaide Blomfield v. United States of America, No. A93-214 Civ. By order dated June 9, 1993, the court requested that our Office issue a decision to the court. Ordinarily, we will dismiss a protest where the matter involved is the subject of litigation before a court of competent

We sustain the protest.

BACKGROUND

GSA issued the SFO on May 21, 1992, seeking proposals for 24,000 net usable square feet of office, laboratory, and related space, with 30 on-site parking spaces, in Anchorage, Alaska for a 10-year term. The SFO contained a description of the area in which any proposed building had to be located (known as the delineated area) which included areas outside the Municipality of Anchorage's Central Business District. The SFO advised that award would be made to the offeror whose offer was the most advantageous to the government, and that price would be of equal weight to the combination of technical evaluation factors. The SFO contained the following technical evaluation factors, listed in descending order of importance: (1) general building quality (electrical, mechanical, communications systems, structural conditions, interior and exterior appearance of space, and layout efficiency of space)--50 percent;² (2) location (relative to parking, public transportation, accessibility, close proximity of major clients, compatibility with surrounding area, and proximity of eating establishments and other employee services)--30 percent; and (3) capability of offeror as evidenced by past performance--20 percent.

jurisdiction; however, where, as here, the district court so requests, we will issue a decision in the matter and will address issues that would otherwise have been dismissed as untimely raised. Bid Protest Regulations, 4 C.F.R. § 21.9(a) (1993); Blue Cross and Blue Shield of Virginia, B-222485, July 11, 1986, 86-2 CPD ¶ 61.

²The percentage weights stated for the technical factors were the actual weights employed by the agency during evaluation under the agency's internal evaluation plan. The evaluation plan also listed the specific subfactors for each of the three major technical factors, that is, building quality (five subfactors); location (five subfactors); and capability of offeror (zero subfactors). Each subfactor was assigned a numerical value from zero to five with five being the best and zero the worst. Each numerical value assigned for each subfactor was multiplied by the given weight and the results were then totaled. Thus, the final total technical score for each offeror was also expressed in terms of a numerical value from zero to five with five being the best and zero the worst. The evaluation plan stressed that the "greatest value concept" would be employed by the evaluators.

By the June 15, 1992, closing date for receipt of initial offers, GSA received four proposals, including proposals from Adelaide,³ which was the incumbent contractor,⁴ and Calais. The agency appointed a Source Selection Evaluation Board (SSEB) which was comprised of a GSA representative and two Forest Service representatives. After evaluation of the initial proposals, discussions were conducted, and the SSEB evaluated a subsequent round of revised proposals. Discussions were again conducted, and, subsequently, the agency requested, received, and evaluated BAFOs.⁵

The following is a summary of the total scores and evaluated prices as a result of the final evaluation of BAFOs:

	<u>Price⁶</u>	<u>Technical Score</u>
Adelaide	\$21.48	2.71
Calais	24.80	4.51

Based on the technical evaluation results from the SSEB, the source selection authority (SSA), after adjusting some scores, determined that the higher technical quality represented by the Calais offer justified award at a higher cost. Calais's offer represented a cost of \$5,966,136 over the contract term; Adelaide's offer was priced at \$5,262,600. This protest followed the award of the lease to Calais.

CONTENTIONS BY THE PROTESTER--AGENCY EVALUATION

Adelaide contends that the agency unreasonably and arbitrarily evaluated its offer either by selectively ignoring portions of its offer or by simply not understanding it and not seeking any clarification of any misunderstanding the agency may have had. Adelaide asserts

³During the course of this procurement, Adelaide submitted various alternate proposals which are not at issue. We will not discuss them in this decision.

⁴The Forest Service has been a tenant at Adelaide's building--located in the Anchorage's Central Business District--for many years.

⁵Of four BAFOs received, one was withdrawn, and a second was not extended. Adelaide and Calais were thus the only offerors remaining in the competition during the final evaluation of BAFOs.

⁶Prices are based on square footage of net useable space per annum. The agency also calculated a present value of the lease prices.

that the SSEB performed a flawed evaluation that has no support or justification based on the offers received. We agree.

ANALYSIS

The evaluation of proposals is primarily within the discretion of the procuring agency. Consequently, we will not make an independent determination of the merits of offers; rather, we will examine the agency evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. See Buffalo Central Terminal, Ltd., B-241210, Jan. 29, 1991, 91-1 CPD ¶ 82. Implicit in the foregoing is that the evaluation must be documented in sufficient detail to show that it was not arbitrary. See Waddell Eng'g Corp., 60 Comp. Gen. 11 (1980), 80-2 CPD ¶ 269; American President Lines, Ltd., B-236834.3, July 20, 1990, 90-2 CPD ¶ 53.

As stated above, the first major technical evaluation criterion contained in the SFO, general building quality, represented 50 percent of the total technical score and contained five subfactors. We will here address, by way of example, major evaluation flaws evident in the record concerning most of the subfactors of this major factor. Regarding the electrical subfactor, Adelaide in its offer provided a narrative description of its electrical system and capacity as well as a certification of adequacy from an electrical engineer. Adelaide's building provides 800 amp service for 25,000 square feet or .0333 amp per square foot. Calais's offer states that it has 1,600 amp service for 85,000 square feet or .0188 per square foot, approximately one-half the capacity of Adelaide's building. Yet, the SSEB, in its final evaluation of BAFOs, scored Calais's offer as a 5 and Adelaide's offer as a 1 in this category. The SSEB's narrative evaluation record does not explain or support the scoring.

Concerning the air conditioning system, Adelaide offered a renovated and upgraded air conditioning system while Calais offered its existing building system. The SSEB awarded Calais 5 points, and Adelaide received only 1 point. Under the interior and exterior appearance factor, although both Adelaide's and Calais's buildings are 15 years old, Adelaide offered a total renovation of both interior and exterior while Calais did not do so. The SSEB awarded Calais 3 points and Adelaide 1 point. Concerning the subfactor layout efficiency of space, Calais's offer consisted of three non-contiguous floors, interrupted by other tenants; Adelaide's offer consisted of three contiguous floors of space with no interior columns to interfere with layout efficiency, as well as the exclusive use of the entire

building. The SSEB awarded both offerors an equal score of 3 points. The SSEB's narrative evaluation record again does not explain or support the scoring.

The second major technical evaluation factor, location, contained six subfactors. We will again discuss, by way of example, the significant subfactors of this major factor. Under the subfactor location relative to public transportation, the record shows that the closest bus stop to the Calais property is across a four-lane highway which cannot be legally crossed by pedestrians except by following a one-half mile circuitous route. Adelaide's property is one block from the Federal building which is served by Anchorage's DASH bus system which provides free public transportation, including 22 bus routes to the Federal building for the convenience of the public. The SSEB awarded both proposals equal points. The SSEB's narrative evaluation record again does not explain or support the scoring.

As another example, under the subfactor location relative to eating establishments, Calais was scored 5 while Adelaide was scored 3. Calais has an eating establishment on site--a limited service tavern--which serves alcoholic beverages and burgers. Adelaide, on the other hand, is within one block of two full service restaurants, including the Federal Office building restaurant. In addition, Adelaide provided a substantial list of proximate eating establishments while Calais did not.⁷ The SSEB's narrative evaluation record again does not explain or support the scoring.

Based on our review of the evaluation record, examples of which are described above, we are unable to conclude that the agency's evaluation had a reasonable basis. In short, the scores awarded by the SSEB are not consistent with the substantive terms of the offers submitted by Calais and Adelaide. The disparate scoring of the two offerors by the SSEB is not reasonable on its face or otherwise supported by the record. It appears that in some cases strengths in Adelaide's offer were scored as weaknesses, and weaknesses in Calais's offer were scored as strengths. This evaluation by the SSEB formed the basis for the award decision. The Final Report of the SSEB to the SSA stated that Adelaide "provides the lowest technical rating (2.51) being weak in most factors," and recommended award to Calais. Although the SSA adjusted upward the scores Adelaide received on two subfactors (electrical and air conditioning), Adelaide's technical point score remained substantially below Calais's

⁷Under the third major criterion, capability of offeror as evidenced by past performance, both offerors received equal points.

score (3.51 vs. 4.51). The SSA approved the SSEB's technical findings and made award consistent with the SSEB's recommendations. Since the SSEB's evaluation lacks a reasonable basis, and since the SSA relied upon that evaluation in selecting Calais for award, we conclude that the selection decision also lacks a reasonable basis.⁶

CONCLUSION

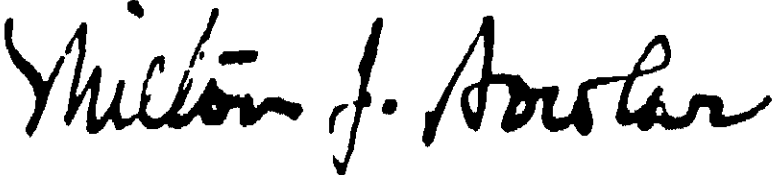
Normally, we would recommend that the agency reevaluate the proposals in a way both reasonable and consistent with the SFO or take other specified corrective action, with a view to possible termination for convenience of Calais's contract. In this case, termination of the awarded contract is not an available remedy because the lease does not contain a termination for convenience clause. Because of the costs attributable to a breach of contract by the government, this Office does not recommend cancellation of a contract unless the award was made contrary to statutory or regulatory requirements because of some action or statement by the contractor, or if the contractor was on direct notice of the violation. 52 Comp. Gen. 215 (1972); Peter N.G. Schwartz Cos. Judiciary Square Ltd. Partnership, B-239007.3, Oct. 31, 1990, 90-2 CPD ¶ 353; see John Reiner & Co. v. United States, 163 Ct. Cl. 381, 325 F.2d 438 (1963), cert. denied, 377 U.S. 931 (1964).

Since there is no basis for termination of the lease, we find that Adelaide's relief is limited to recovery of its proposal preparation costs and the reasonable costs of pursuing its protest, including attorneys' fees. 4 C.F.R.

⁶Adelaide advances several other grounds of protest relating to the agency's evaluation of offers. Specifically, Adelaide alleges that Calais' offer was unacceptable because its seismic certification was submitted after the closing time for receipt of BAFO's; the offer did not meet the minimum space requirements of 24,000 square feet; discussions were not adequate or meaningful; price was not afforded sufficient weight in the evaluation; Calais' offer failed to meet the requirement for fire sprinklers; and GSA's award to Calais violated the requirements of Executive Order 12072. Irrespective of their merit, we do not discuss these additional issues raised by Adelaide because the issue discussed above alone warrants sustaining the protest and because there is no basis for corrective action by the agency.

§ 21.6(d) (1993). Adelaide should submit its certified claim directly to GSA within 60 working days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

for 
Comptroller General
of the United States